

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIE L. McNAIR,	§
	§ No. 578, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court of
	§ the State of Delaware, in and for
	§ New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0801022273
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 28, 2011

Decided: March 4, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of March 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Willie L. McNair, filed an appeal from the Superior Court's August 19, 2010 order denying his motion for credit for Level V time served. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that McNair was indicted and held at Level V in default of bail on two sets of charges—the first in Cr. ID No. 0805040580 and the second in Cr. ID No. 0801022273. These latter charges are the subject of the instant appeal. On the first set of charges—Possession

of Burglary Tools, Possession of Drug Paraphernalia and Trespassing (the “paraphernalia case”)–McNair was incarcerated in default of bail from May 29, 2008 until December 4, 2008, when he pleaded guilty to Possession of Drug Paraphernalia and Trespassing and was sentenced to a fine and probation. The sentencing order on those convictions included an effective date of May 29, 2008.

(3) On the second set of charges–Burglary in the Third Degree, Misdemeanor Theft, Criminal Mischief and Offensive Touching (the “burglary case”)–McNair was incarcerated in default of bail from June 9, 2008 until June 26, 2009. McNair also was held in default of bail between March 30, 2008 and May 9, 2008, when the charges on which he originally were arrested were dismissed.

(4) In the sentencing order in the burglary case (the “June 2009 sentencing order”), the Superior Court explicitly credited McNair with 39 days of Level V time previously served, representing the time between his arrest on March 30, 2008 and May 9, 2008, when his charges were dismissed. The sentencing order also included an effective date of December 4, 2008, thereby crediting McNair with time served between December 4, 2008, when the paraphernalia charge was disposed of by plea

and he was sentenced to probation, and June 26, 2009, when he was sentenced in the burglary case.*

(5) Under Del. Code Ann. tit. 11, §3901(b) and (c), a defendant must be credited with all Level V time served in default of bail either by “backdating” the effective date to the date of incarceration or by crediting the defendant with the time served. In this case, the June 2009 sentencing order properly credited McNair with the Level V time to which he was entitled. As such, the Superior Court properly denied McNair’s motion for additional credit time.

(6) In the absence of any evidence that McNair has not been given credit for all of the Level V time to which he is entitled, or that the Superior Court erred or abused its discretion in denying McNair’s motion, we conclude that the judgment of the Superior Court must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

* The period between July 1, 2008 and December 4, 2008 was not included in this calculation because it was accounted for in McNair’s paraphernalia sentence, which provided for 1 year at Level V, effective May 29, 2008, suspended on December 4, 2008, for probation.